S.R.M.M. ANNAMALAI CHETTIAR
v.
LASSAM BINTI VEERAMANAWI.

[Orig. Civ. Juris. (Buhagiar, J.) July 10, 1952]

[K. L. — Civil Suit No. 211 of 1950]

Agency — Power of Attorney — Delegation of — Extent of power.

In 1937 the plaintiff appointed A by Power of Attorney to be manager of his firm in Seremban. In 1939 A delegated his power to B by Power of Attorney. A died in 1940. During B's management the defendant executed 3 charges on some land and also a promissory note in favour of the plaintiff. In September 1942 B appointed C by Power of Attorney to do all the acts which B was authorised by his Power of Attorney. Soon after B died. In 1943 the defendant obtained from C discharges of the 3 charges and paid up to C on the promissory note.

The plaintiff prayed that the said discharge be declared void and claimed the amount due on the promissory note with interest to be paid by the defendant, on the ground that the 3rd Power of Attorney appointing C was void **ab initio**. The main point at issue was the extent of the power of delegation contained in the 1st Power of Attorney executed by the plaintiff appointing A.

Held: (1) on the construction of the terms of the 1st Power of Attorney and on the subsequent conduct of the plaintiff, an intention to give a general power of delegation can be inferred; (2) even if the authority of an agent is conferred in ambiguous terms, every act done by the agent which is warranted by any one of these constructions, can be deemed to have been duly authorised.

Case referred to :—

(1) *Puran Singh v. Kehar Singh* (1939) M.L.J. 71.

CIVIL SUIT.

B. J. P. Joaquim and *M. N. Cumarasami* for the plaintiff.

F. J. Woodward for the defendant.

Cur. Adv. Vult.

Buhagiar, J. : —The plaintiff is the managing partner of the firm Seena Ravanna Nana Moona which for several years has had a branch at Seremban and has been carrying on business there. By Power of Attorney dated 31st March, 1937 (hereinafter referred to as P/A 1) the plaintiff appointed one Subramaniam Chettiar (who from the particulars about paternity given in the instrument seems to have been his son) to be manager of the firm in Seremban. A true copy of this instrument was deposited in the Supreme Court at Seremban on the 6th April, 1937.

On the 10th January, 1939, Subramaniam Chettiar executed a Power of Attorney in Seremban (hereinafter referred to as P/A 2) appointing one Periyakaruppan Chettiar as his substitute to carry out the powers given to him by the plaintiff under P/A 1. Soon after the execution of P/A 2, the said Subramaniam returned to India and there died on the 18th October, 1940. A copy of this instrument was deposited in the Supreme Court in Seremban on the 11th day of January, 1939. During Periyakaruppan's management the defendant on the 9th March, 1940, 6th May, 1940 and the 15th January, 1941, executed three charges on various plots of land in favour of the plaintiff, and on the 15th January, 1941, also executed a promissory note for five hundred dollars ($500) in favour of the plaintiff.

On the 7th September, 1942, the said Periyakaruppan executed in Seremban a Power of Attorney (hereinafter referred to as P/A 3) appointing one Kasi to be his substitute to perform all acts and things which he (Periyakaruppan) was authorised to perform by virtue of P/A 2. The said Periyakaruppan died in Seremban on the 17th September, 1942. A copy of this instrument was deposited in the Supreme Court in Seremban on the 9th September, 2602 (i.e. 1942).

On the 30th January, 1943, the defendant paid to the said Kasi a sum of $500 (in British currency) due to the plaintiff on the promissory note executed by her on the 15th January, 1941. On the 8th June, 1943, the said Kasi, acting on behalf of the plaintiff, executed discharges of the 3 charges referred to above.

The plaintiff is now praying :—

(a) that the said discharges of the charges referred to above be declared void and that the Collector of Land Revenue, Kuala Langat, be ordered to reinstate the plaintiff as the chargee of the said charges; and

(b) that the defendant do pay to the plaintiff the sum of $500 with interest thereon due on the promissory note referred to above.

The basis of this claim is that P/A 3, i.e. the Power of Attorney of the 7th September, 1941, executed by Periyakaruppan appointing Kasi as attorney was void *ab initio*.

The plaintiff's contention is that Subramaniam Chettiar did not have the power by virtue of P/A 1 to appoint a substitute. By virtue of his appointment under P/A 2 Periyakaruppan could only be a sub-agent and no direct privity of contract was created between him and the plaintiff, and therefore with the death of Subramaniam, which occurred on the 18th October, 1940, Periyakaruppan's authority ceased. In this connection Mr. Joaquim for the plaintiff referred to section 5 of the Powers of Attorney Ordinance, 1949 (No. 64 of 1949). (This Ordinance repealed the Powers of Attorney Enactment (F.M.S. Cap. 66); the provisions of section 5 of the Ordinance are identical to section 4 of the repealed Enactment). According to the said section instruments creating powers of attorney and deposited as provided by that Ordinance are to continue in force until, *inter alia*, the donor or donee has died. Mr. Joaquim submitted that this Ordinance is a special legislation and *pro tanto* its provisions

override the provisions of section 161 of the Contracts (Malay States) Ordinance, 1950 (No. 14 of 1950). (The provisions of this section are identical to section 200 of the Contract Enactment (F.M.S. Cap. 52) repealed by the said Ordinance). This section provides that the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third parties, before it becomes known to them). After the 18th October, 1940, Periyakaruppan had no authority to execute P/A 3 and therefore the appointment of Kasi was null and void *ab initio*. Mr. Joaquim also, point out that the Agents and Trustees Ordinance, 1949, (No. 38 of 1949) does not have the effect of reinstating Periyakaruppan as agent for the plaintiff. I do not think there is any question about this; if Periyakaruppan had no authority to act at the beginning of the occupation period, that Ordinance did not give him the authority; the provisions of section 3 of that Ordinance are quite clear; under that section a person is deemed to be an agent if "immediately prior to the commencement of the occupation period that person had authority to act as agent for another" and if such person acts within the scope of his former authority. That Ordinance is intended to continue in force agency which would have been determined by operation of law, as a result of the occupation of Malaya by the Japanese.

Mr. Woodward for the defendant replied that if Periyakaruppan's authority ceased on the 18th October, 1940, then the charge executed by the defendant in favour of the plaintiff on the 15th January, 1941 and the promissory note executed by the defendant for $500 on the 15th January, 1941 were executed at a time when Periyakaruppan had no authority to act for the plaintiff. Mr. Joaquim for the plaintiff submitted that at the time these instruments were executed Periyakaruppan was acting as manager in Seremban and his authority sprang from the head office of the firm in India; as manager he was authorised to execute charges and to lend money on promissory notes. There is no evidence, however, that Periyakaruppan was appointed as manager; from the evidence it seems that the plaintiff accepted the position of Periyakaruppan as deriving his authority from P/A 1.

On behalf of the defendant, Mr. Woodward submitted that Kasi was an agent of necessity and his acts bind the plaintiff. It was argued for the plaintiff that Periyakaruppan had authority to manage the plaintiff's business in Seremban; until the death of Subramaniam this authority derived from P/A 1 and thereafter from the fact that he had been appointed manager from the head office. If, therefore, Periyakaruppan had authority to act for the plaintiff he had, in case of an emergency, conferred on him by law the power to appoint an agent in order to preserve the property and interests of his principal. In September, 1942 Periyakaruppan could not, because of the occupation of Malaya, communicate with the plaintiff, and as his health was failing he considered it proper to appoint a person to look after the plaintiff's interests and appointed the most obvious person under the circumstances, that is Kasi, who having been employed as a clerk for some years, was fully acquainted with the plaintiff's business in Seremban. There is no direct evidence that Periyakaruppan executed P/A 3 because of his failing health but the fact that he died ten days later is very symptomatic.

Mr. Woodward, for the defendant submitted that the reason why Kasi's authority is being now attacked is not that P/A 1 did not contain a general power of delegation but the fact that after Karuppan, who took over from Kasi in 1947, had the opportunity of examining the situation of the business in Seremban, he found that the business had not proved fruitful during Kasi's management mainly because the cash that Kasi handed over consisted of Japanese currency. No action was ever taken by the plaintiff to repudiate the transactions done by Periyakaruppan. He also pointed out that the plaintiff made no effort to deny Kasi's authority until the passing of the Debtor and Creditor (Occupation Period) Ordinance, 1948, when he stood to gain some financial advantage under the Ordinance.

Kasi had been employed as a clerk in the branch at Seremban of the plaintiff's firm for several years. According to Karuppan who gave evidence for the plaintiff, Kasi was not qualified and his experience was not sufficient to enable him to take over the business. Karuppan stated that Kasi mismanaged the business in that he never invested the money of the business either by buying property or otherwise. Books were kept by Kasi and, according to Karuppan, these books represent a true picture of the transactions done by Kasi. Kasi also handed to Karuppan cash (which was kept in an iron safe) amounting to $170,000 in Japanese currency; this figure was about $777 less than the figures shown on the books. Kasi explained this difference to Karuppan saying that the difference was due to money spent for food and other expenses. Karuppan stated that Kasi kept no bank account implying that if Kasi had done so the plaintiff would not, in 1947, be faced with valueless currency.

The first point to be determined is the extent of the authority of Subramaniam under P/A 1 to delegate the powers conferred on him by that instrument. It is not contested between the parties that if such

instrument gave express power of delegation, such power is to be found in the two final paragraphs of P/A 1 which are as follows:—

"Generally to do and perform all such acts deeds matters and things in relation to the premises as my said attorney may deem expedient as fully and effectually as I could were I personally present. And likewise to appoint one or more attorney or attorneys under him with the same or more limited powers and such attorney or attorneys to set aside or substitute and such power or powers to revoke at pleasure.

And I do hereby agree to ratify allow and confirm all and singular whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done within the premises by virtue of these presents."

It is not denied by the plaintiff that the first of the above two paragraphs give express power of delegation; what is contested is the extent of such power. Did Subramaniam have the power to delegate his authority and appoint an agent or simply to appoint a sub-agent? In the first case the provisions of section 194 of the Contracts Enactment of the F.M.S. (Cap. 52) (now repealed) apply; this section provides that where an agent holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal of such part of the business of the agency as is entrusted to him. In the latter case the provisions of sections 191, 192 and 193 of the said Enactment apply; section 191 defines "sub-agent" as meaning a person employed by, and acting under the control of, the original agent in the business of the agency. The distinction between a sub-agent, such as that described in section 191 and an agent appointed by an agent "holding an express or implied authority to name another person" under section 194, is that while the former is the servant of, and immediately responsible to, the agent and is not generally responsible to the principal there being no priority of contract between the principal and the sub-agent, the latter becomes, by his appointment, the servant of the principal, and is therefore, immediately responsible to him.

Mr. Joaquim for the plaintiff submitted that the first paragraph above referred to differs from the common form adopted to give a general power of delegation and he referred to the form at p. 422 in Vol. 1 of the *Encyclopaedia of Forms and Precedents* (1902 ed.); he also argued that the words "the same" used in the context "with the same or more limited powers" in the said paragraph refer to the powers specifically mentioned in paragraphs 1 to 19 of P/A 1 and he referred to *Stroud's Judicial Dictionary* (2nd ed.) at p. 1788 under the heading "SAME". He also submitted that if the first paragraph does not confer a general power of delegation, his power cannot be inferred from the use of the words "substitute or substitutes" in the second paragraph which deals with ratification. Mr. Woodward for the defendant submitted that the whole document must be taken in consideration to arrive at the true intention.

If the authority given to Subramaniam under P/A 1 was only to appoint a sub-agent then Periyakaruppan, as sub-agent had no authority to appoint a further agent; there cannot be a double substitution (See *Puran Singh v. Kehar Singh*[1]).

Although the first paragraph does not follow the common form, I think that its terms do confer a general power of delegation; the terms of the paragraph amount to a power to name another person who may be given *the same* powers to act for the principal in the business of the agency; and the provisions of section 194 of the Contract Enactment apply. That it was the intention of the person executing P/A 1 (i.e. the plaintiff) to give a general power of delegation is, in my opinion, supported by the subsequent conduct of the plaintiff, as will be shown later. I may also say here that even if the said paragraph is worded in ambiguous terms, there is authority for the proposition that "where the authority of an agent is conferred in such ambiguous terms, ... as to be fairly capable to more than one construction, every act done by him (the agent), which is warranted by any one of these constructions, is deemed to have been duly authorised, though the construction adopted and acted upon by him (agent) was not the one intended by the principal" —see *Bowstead on Agency* 10th ed. p. 48 and cases there quoted. There is no evidence that Subramaniam acted in bad faith and consequently if one of the possible constructions of P/A 1 is that it gave a general power of delegation, although that was not the intention of the plaintiff, P/A 2 executed by Subramaniam on the strength of the construction is not void.

Karuppan Chettiar, who is the present Malayan manager of the plaintiff's firm, gave evidence for the plaintiff. He said that he had been employed by the firm for about 14 or 15 years; at the time of Subramaniam's death he was at the Head Office in India and was acting in the capacity of secretary to the plaintiff; on the plaintiff's instructions, he wrote to Periyakaruppan mentioning the fact that Subramaniam had died and asking him to make arrangements to take take out Letters of Administration. Periyakaruppan replied to this letter and there was subsequently correspondence between him and the plaintiff. It was known to the plaintiff, at that time, that Periyakaruppan was acting for the plaintiff's firm in Seremban and it must also have been known to the plaintiff that Subramaniam had on 10th January, 1939, appointed

Periyakaruppan as his substitute and that Periyakaruppan was acting on the strength of the instrument (P/A 2) appointing him as substitute with general powers. Karuppan did not state that Periyakaruppan was given any authority from the head office of the plaintiff's firm to act in Seremban. There is no evidence that the plaintiff, at any time before the institution of these proceedings, contended that Subramaniam had exceeded his authority in executing P/A 1. There is, however, evidence that the plaintiff has taken no action to repudiate any of the transactions done by Periyakaruppan. Karuppan stated in his evidence that he could not say whether Periyakaruppan was a good or a bad manager though nothing was done about Periyakaruppan's transactions because he is dead.

Periyakaruppan carried on the business until 10th September, 1942, when he executed P/A 3, appointing Kasi; he died ten days later in Seremban.

Kasi took over from Periyakaruppan and continued to conduct the plaintiff's business in Seremban until Karuppan took over in July, 1947.

With the outbreak of hostilities in December, 1941, lines of communication between this country and India were broken and were not resumed until the end of the occupation, that is in September, 1945. Between these two dates it was not likely that the plaintiff could communicate with Kasi and inform him that P/A 3 was null and void and that he had no *locus standi* in the firm. But even after Karuppan took over, no action was taken by the plaintiff to repudiate Kasi's transactions until 1949.

When Karuppan took over he took no action to attack Kasi's authority. On the 25th September, 1946, Kasi had written to the Commissioner of Land Revenue sending two restriction notices about the land affected by the dischargee, stating that the discharge was paid in Japanese currency. The defendant replied that payment was made in British currency; no action was ever taken by Karuppan to inform the Collector of Land Revenue that Kasi had no authority to sign for the firm. The reason given by Karuppan for failing to take any action is that he was told that nothing could be done because of the Moratorium.

The conduct of the plaintiff after the execution of P/A 1 by Subramaniam, if it does not amount to a confirmation of the intention to give Subramaniam full authority to appoint a substitute, amounts to a ratification by the plaintiff of Subramaniam's action.

For the above reasons I hold that Kasi had authority to act and bind the plaintiff and the suit is dismissed with costs.

Suit dismissed.

REG. v. BAICHAND.

[App. Crim. Juris. (Spenser Wilkinson, J.) November 3, 1952]

[Penang — Criminal Appeal No. 20 of 1952]

Custom Enactment, ss. 117 and 119 — Disposal of Exhibits — Property "produced before the Court" — Meaning of — Criminal Procedure Code (Cap. 21), s. 435.

There being no provision in the Customs Enactment enabling the Court to deal with goods which have been seized but are not liable to seizure and no provision in the Criminal Procedure Code enabling a Criminal Court to transfer the ownership or possession of innocent goods the only course open to the Magistrate in the present case was to order the return of the exhibits to the authority which had produced them, namely the Customs authorities.

Semble: For the purposes of section 435 of the Criminal Procedure Code the only property which can be said to have been "produced before the Court" is the property which has been physically produced before it.

Cases referred to:—

(1) *Soon Chee Kong v. Public Prosecutor* (1951) M.L.J. 86; (1951) M.L.R. 84.

(2) *De Keyser v. British Railway Traffic & Electric Co. Ltd.* (1936) 1 K.B. 224.

CRIMINAL APPEAL.

C. M. Sheridan (Federal Counsel) for the Crown.

R. D. Hume for the respondent.

The facts and arguments appear sufficiently from the judgment.

Spenser Wilkinson, J. : — This was an appeal by the Crown against the acquittal of the respondent on a charge under sections 117 and 119 of the Customs Enactment and against the order made by the Magistrate for the disposal of certain exhibits.

The case arose in respect of 3,000 heavy cees gunny bags, which were seized on the wharf whence they were about to be exported, on the ground that they were a prohibited export. The bags in question were contained in twelve bundles and one of those bundles was produced in Court as Exhibit P. 1. One sack out of this bundle was separately marked as Exhibit P. 2.

Before the hearing of the appeal the Deputy Public Prosecutor had given notice that he would not proceed on his first ground of appeal which related to the acquittal, so that the appeal against the acquittal was in effect withdrawn. The only matter for argument left in the appeal therefore was whether or not the order of the Magistrate that Exhibits P. 1 and P. 2 should be delivered to accused No. 1 was correct.

Owing to the fact that the appeal started as one against an acquittal the learned Magistrate did not deal in his grounds of judgment with the question of